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OCT - 9 1991

In reply, please address
Main Interior, Room 6456

Memorandum

To: Solicitor

From: Acting Associate Solicitor, Indian Affairs

Subject: Tribal Participants in the Self-Governance
Demonstration Project

You asked whether the entities that have received BIA Self-Governance demonstration compacts are tribes.

Eight tribal compacts have been signed, specifically by Absentee Shawnee, Cherokee, Hoopa Valley, Jamestown Klallam, Lummi, Mille Lacs, Quinault and Sac and Fox. All of the entities which have signed Self-Governance compacts are tribes as defined in Section 450b (e) of 25 U.S.C., which sets out the definition of "tribe" for the Indian Self-Determination and Education Assistance Act as amended, of which the Tribal Self-Governance Demonstration Project is Title III. Section 302 of Title III provides, in pertinent part, "The Secretary shall select twenty tribes to participate in the demonstration project...." The definition of tribe in Section 450b (e) reads:

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C.A. §1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

A question could arise as to whether Mille Lacs, a band of limited autonomy of the Minnesota Chippewa Tribe, is a tribe within the meaning of Section 450b (e). However, Mille Lacs was listed as an eligible participant on the initial Congressional list of tribal participants as specified in the 1988 Appropriations Committee Conference Report which is referenced in Section 302(a) of P. L. 100-472 as follows:

(1) A tribe that successfully completes a Self-Governance Planning Grant, authorized by Conference Report 100-498 to accompany H. J. Res. 395, One-

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Hundredth Congress, 1st Session. . . shall be selected to participate in the demonstration project; and

Mille Lacs' successful completion of a Self-Governance planning grant removes any doubt as to its eligibility to participate in the demonstration project. Attached are copies of the legal advice rendered with respect to Mille Lacs' eligibility to participate in the program, the statute which created the Self-Governance Project, the list of participants, the Federal Register announcement and the FY 1988 Appropriations Conference Report.¹

Twenty-one other entities are now involved in the self-governance planning process. There may be a question about three entities that are Alaska consortiums, Tlingit Haida, Tanana Chiefs and Kawerak. A strict interpretation of the definition of tribe in Section 450b (e) could eliminate Alaskan consortiums as participants in the program. However, Congress, in the aforementioned Conference language, offered the Department guidance in the initial selection of participants in the demonstration program and allowed an Alaskan consortium to participate in the program. Although this report does not have the force of law, a liberal interpretation would support the decision to include Alaskan consortiums for purposes of a demonstration involving 638 contracts as a matter of comity between the executive and legislative branches.

With respect to the Alaskan consortiums, Tlingit Haida was listed on the initial list of participants approved by Congress. Tlingit Haida is in the final stages of negotiation and should have a signed compact in the fall. Tanana Chiefs was approved in May, 1990 for planning grant monies. If negotiations for a compact were to proceed, Tanana Chiefs would be required to have specific resolutions from all the villages represented for purposes of negotiating a self-governance compact on their behalf. Kawerak Inc., is a consortium of villages eligible to receive services from the BIA. Kawerak has received planning grant monies. Kawerak will complete negotiations for a compact with the understanding that specific signed resolutions from the villages represented by Kawerak would be necessary. Often, these consortiums have contracted with the government as Indian organizations who serve as agents for the villages for purposes of consolidating services in one 638 contract. Principles of

¹ A band of the Minnesota Chippewa Tribe, Leech Lake, which was not listed in the above referenced Conference Report, is being treated in the same manner as Mille Lacs, for purposes of being eligible to participate as a tribe in the demonstration project, since it has identical status to Mille Lacs in the Minnesota Chippewa Tribe.

agency law applied in this situation provide a basis for Kawerak and Tanana Chiefs² to represent the villages for self-governance compact purposes.

Tanana Chiefs, Kawerak and Leech Lake competed in the Self-Governance selection process published in the Federal Register, on December 21, 1989, and were accepted in the program and awarded planning grants by the Office of Tribal Services, prior to the creation of the Office of Self-Governance, which has consequently inherited their participation.

Please advise if there is additional information which you desire.

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Charles B. Hughes

Attachments

bcc: Roger Hudson, SOL-Alaska
Larry Cox, SOL-Portland
Other SOL Offices affected by these contract
DIA
Docket
SFreeman
DRBarnes

SOL:DIA:SFreeman:bjw:8/15/91

do: Govrc
fo: NOTES
dr: FREEMAN

² The consortium approach also encourages consolidation of services for economic reasons.